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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

WEALTHA WEAVER,

Plaintiff and Appellant,

v.

CHARLEEN RASMUSSEN et al.,

Defendants and Respondents.

E037054

(Super.Ct.No. VCV33513)

OPINION

APPEAL from the Superior Court of San Bernardino County. Rufus L. Yent,  
Judge. Affirmed.

Wealtha F. Weaver, in pro. per., for Plaintiff and Appellant.

Law Offices of Robert W. Ripley & Associates and Lena Ghianni, for Defendants  
and Respondents.

1. Introduction

Plaintiff and appellant Wealtha Weaver appeals after the trial court dismissed her  
action. The trial court sustained the demurrer of defendants and respondents Charleen

Rasmussen, Scott Simmons, and Jan Sloan, with leave to plaintiff to amend her complaint. Plaintiff failed to submit a new amended pleading within the time allowed. The court dismissed the complaint and gave judgment for defendants. We affirm.

## 2. Factual and Procedural Background

Plaintiff in propria persona filed a complaint against Charleen Rasmussen, Scott Simmons, Jan Sloan, an entity called Loan Emporium, another entity called All Points Escrow, Inc., and other named defendants. The situation arose out of an apparent series of loan and mortgage transactions, which plaintiff appears to assert were part of a scheme to defraud her of her interest in two properties: a residence in Victorville, and a condominium in the mountains. Plaintiff's complaint is convoluted, and describes multiple loans, mortgages, foreclosures, refinancing transaction, transfer of deeds, and so forth, in a hodge podge of conflicting allegations.

Plaintiff's complaint alleged causes of action for an accounting, negligence, negligent misrepresentation, fraud, breach of fiduciary duty, conspiracy, and breach of contract. The gist of each cause of action is difficult to tease out, and many of the allegations are incoherent, or are inconsistent with other allegations.

In the cause of action for an accounting, for example, plaintiff alleged that the defendants had each misappropriated at least \$65,000 from her, but does not describe any particular agreement, or mechanism, or other facts to support a cause of action for an accounting. With respect to the cause of action for negligent misrepresentation, plaintiff made the allegation, among others, that "Defendant Encore Credit misled PLAINTIFF when Encore stated they suspected the loan wasn't legally constructed in regard to the

sale of the Victorville house to Scott Weaver [plaintiff's son]." Such an allegation is mystifying as a basis for liability if, in fact, plaintiff now asserts that the sale of the house to plaintiff's son was somehow improper. The cause of action for fraud alleged in vague terms that all the defendants misrepresented facts to plaintiff, but did not specify particular representations, or tie them to particular transactions. Plaintiff also complained that, although defendants were real estate, loan or escrow professionals, their "using the DEFENDANT'S [sic] properties to make commissions" on the real estate transactions somehow constituted fraud and deceit.

Rasmussen, Simmons and Sloan demurred to the complaint. The trial court sustained the demurrer, and granted 30 days leave to amend.

Plaintiff filed an amended complaint. The new pleading was much the same as the first, with some added paragraphs. Again, elaborate mortgage and lending schemes were vaguely described, and plaintiff reiterated her causes of action for an accounting, negligence, negligent misrepresentation, fraud, breach of fiduciary duty, conspiracy and breach of contract.

Rasmussen, Simmons and Sloan again demurred to the amended complaint. Plaintiff responded by moving ex parte to consolidate the instant case with two pending unlawful detainer proceedings; the unlawful detainer proceedings apparently involved both the mountain condominium and the home in Victorville. The court denied the request for ex parte orders, and plaintiff refiled her motion to consolidate. The court denied plaintiff's motion for consolidation.

In the meantime, on July 14, 2004, while plaintiff's consolidation proceedings were pending, the trial court ruled on the demurrer, sustaining the demurrer and giving plaintiff 20 days to file an amended pleading. Plaintiff fails to include the court's ruling on the second demurrer in the clerk's transcript, but the ruling is noted in the register of actions.

On August 6, 2004, defendants Rasmussen, Simmons and Sloan moved to dismiss the action, on the ground that plaintiff failed to file an amended pleading within the time allowed. Other defendants joined in the motion to dismiss.

On August 23, 2004, the day before the hearing set on the motion to dismiss, plaintiff filed an ex parte application for an order extending the time in which to file her amended pleading. Plaintiff averred that she had been battling two eviction cases, had had to surrender the premises to the mountain condominium and had to move all her possessions, that she had been unable to access her books and papers, and so had missed the pleading deadline.

On August 24, 2004, the court heard the motion to dismiss, and took it under submission. The court also heard plaintiff's ex parte motion to extend time. On August 25, 2004, the court granted the motion to dismiss, and denied plaintiff's ex parte motion as moot. On September 8, 2004, the court entered a judgment of dismissal.

Plaintiff moved for reconsideration of the dismissal, which the trial court denied. Plaintiff now appeals from that judgment.

### 3. Analysis

#### A. Standard of Review

A trial court's determination to dismiss an action under Code of Civil Procedure section 581, subdivision (f)(2), for failure to file an amended pleading after a demurrer is sustained, is reviewed for abuse of discretion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.) "The burden is on plaintiff[] to establish such abuse." (*Ibid.*)

#### B. The Court Did Not Abuse Its Discretion in Dismissing the Action

Plaintiff has failed to carry her burden on appeal of showing any abuse of discretion. Plaintiff's opening brief on appeal contains many matters which are of no relevance to the issue at hand. As to the question of the propriety of the dismissal, plaintiff adverts to her statement in her motion for reconsideration, noting that she had been occupied defending the eviction actions on the two properties, she had had to move all her possessions from the mountain condominium, she was injured in the move and could not work for two weeks, and the movers had misplaced her legal papers.

As the trial court noted in denying the motion for reconsideration, however, plaintiff "has not identified any new or different facts upon which the motion . . . is based and has failed to show that her failure to produce the evidence earlier was not a result of her lack of diligence."

Plaintiff's pleadings below, like her briefing on appeal, consisted largely of irrelevant and incoherent matter. The allegations of the complaint were vague and internally inconsistent. The terms of specific agreements at issue were not set forth.

Plaintiff has failed to indicate in any comprehensible way either how she could have amended her complaint, or why she had been unable to marshal the necessary facts in a timely fashion.

“The burden of affirmatively demonstrating error is on the appellant.”

(*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.)

Plaintiff has failed to show affirmative error, or manifest abuse of discretion.

4. Disposition

The judgment of dismissal is affirmed. Respondents are awarded their costs on appeal.

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/s/ GAUT  
J.

We concur:

/s/ McKINSTER  
Acting P. J.

/s/ RICHLI  
J.